UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/50/7/Add.8
8 December 1995

ORIGINAL: ENGLISH

Fiftieth session
Agenda items 116 and 159

PROPOSED PROGRAMME BUDGET FOR THE BIENNIUM 1996-1997

HUMAN RESOURCES MANAGEMENT

Reform of the internal system of justice in the United Nations Secretariat

Ninth report of the Advisory Committee on Administrative and Budgetary Questions

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on the reform of the internal system of justice in the United Nations Secretariat (A/C.5/50/2). During its consideration of the report, the Advisory Committee met with representatives of the Secretary-General, who provided additional information.

2. The Advisory Committee recalls that the Secretary-General's report is a consolidation of his earlier reports: documents A/C.5/49/60, containing the major elements of the proposed reform, A/C.5/49/60/Add.1, on the financial implications of the reform, and A/C.5/49/60/Add.2 and Corr.1, amending the original proposal. The Secretary-General's report has now been supplemented by document A/C.5/50/2/Add.1, which contains further comments by the Secretary-General, comments by the New York Staff Union and further comments by the Administrative Tribunal.

3. The Advisory Committee recalls that much of the attention paid in recent years to the subject of "administration of justice" stems from comments made by the Committee in its first report on the proposed programme budget for 1986-1987. 1/ In that report, the Committee noted that the Organization was facing:

> "significant and growing problems in the form of the multiplicity of time-consuming and cumbersome procedures (particularly for performance review actions), the growing numbers of appeals and other grievances which are filed, and long delays in the administration of justice." (para. 69)

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The Advisory Committee indicated that there was:

> "an urgent need to simplify administrative procedures with a view to achieving a significant reduction in the number of cases requiring full-scale formal review." (para. 71)

4. Pointing out that those matters had a major financial impact that Member States could ignore, not only in direct costs but in staff time and distraction from work, the Advisory Committee recommended a focus on the following:

(a) Simplifying rules and procedures so that the staff could more easily inform itself of its rights and obligations. In that way, misunderstandings and appeals as the result of confusion over the proper interpretation of complex texts could be minimized;

(b) Identifying those aspects of staff administration which gave rise to an inordinate number of appeals, with a view to reform in those areas;

(c) Streamlining the appeals procedures so as to provide for (i) quick settlement of minor disputes prior to the appeals stage, (ii) a mechanism to reject applications for review that were frivolous, and (iii) more efficient handling of cases that reached the Joint Appeals Board (JAB) and Administrative Tribunal.

5. The Committee stressed that, in making its recommendation, it was not intended to impose any specific set of solutions or to interfere with the Secretary-General's responsibility to administer the staff. However, in the light of the situation referred to, the Committee believed that the General Assembly should be given the necessary information to assure itself that the causes of the problem had been identified and that solutions had been formulated.

6. It is against this background that the Advisory Committee has, since May, been reviewing the proposals in the various documents submitted by the Secretary-General. The current proposals on reform of the internal system of justice are a follow-up to an earlier report enumerating basic concepts (A/C.5/49/13) and were submitted pursuant to the request of the General Assembly in its resolution 49/222.

7. In paragraph 6 of his most recent report (A/C.5/50/2), the Secretary-General indicates that the purpose of the proposed reform is threefold:

(a) To enhance earlier reconciliation and resolution of disputes before they develop into formal litigation;

(b) To professionalize the membership of appeals and disciplinary boards and to provide them the means to dispose of cases in a more expeditious yet fair fashion;

(c) To provide a cost-effective and simple justice system, with the elimination of hidden costs and cost-subsidization.

8. With regard to the early reconciliation and resolution of disputes discussed in section II of the Secretary-General's report, the Advisory Committee notes that the Secretary-General proposes to provide training in early resolution of conflicts, appoint ombudsman panels at all major duty stations to deal with disagreements, grievances and discrimination issues raised informally by staff members and increase its capacity to conduct effective reviews of administrative decisions at an early stage of the process.

9. The Advisory Committee notes from paragraph 9 of the Secretary-General's report (A/C.5/50/2) that new training programmes provided for in the 1994-1995 biennium have been designed to improve communication skills and dispute resolution techniques. The Committee also notes that executive and personnel officers as well as administrators are currently going through training that will allow them to identify the real concerns of staff members.

10. In paragraphs 10 to 13 of the same report, the Secretary-General discusses the establishment of ombudsman panels at all major duty stations to deal with disagreements, grievances and discrimination issues raised by staff members. The ombudsman panels, to be appointed by existing staff-management machinery, will replace the current panels on discrimination and other grievances. The Advisory Committee notes that the difference between the proposed ombudsman panels and the existing discrimination panels is that the former will emphasize mediation between the parties in order to resolve disputes before they develop into formal litigation. Members of the ombudsman panels will also be trained as part of the training programme.

11. In paragraph 12 of his report, the Secretary-General proposes to establish a post of Coordinator at the D-1 level to organize, train and guide ombudsman panels. The Advisory Committee notes that, in addition, should the General Assembly approve the Secretary-General's proposal, an amount of $41,300 would be required in 1996-1997 for travel of the Coordinator to help to establish ombudsman panels at the various duty stations.

12. The Committee welcomes the intention of the Secretary-General to facilitate early reconciliation and resolution of disputes since this should help to reduce the number of cases that would require formal review consistent with the previous call to this effect by the Advisory Committee (see para. 3 above). To this end, the Committee concurs in the proposed appointment of ombudsmen and mediation panels at all major duty stations and the provision of a D-1 post for the appointment of a Coordinator.

13. In order to increase capacity to conduct effective reviews of administrative decisions, the Secretary-General, in paragraph 14 of his report, proposes the establishment of two posts of review officers, one at the P-5 level and one at the P-4 level. It is also proposed that review of these decisions be conducted within the Office of the Under-Secretary-General for Administration and Management, independently of the official in that office who provides advice on decisions to be taken on recommendations received from advisory bodies in appeal and disciplinary cases. The Secretary-General also proposes to amend staff rule 111.2 (a) to provide a three-month time-limit for staff members to request administrative review and to amend staff rule 111.2 (a) (ii) to provide

a two-month review period for cases arising in New York and a three-month review period for all other cases.

14. The Committee recognizes the necessity of ensuring that the initial review of administrative decisions be carried out thoroughly and expeditiously; it trusts that the measures indicated in the Secretary-General's report will be effective and, to this end, the Committee recommends acceptance of the proposed new P-4 and P-5 posts. The Committee further recommends that the unit be accorded operational independence so as to ensure objectivity and efficiency.

15. Section III of the Secretary-General's report deals with professionalizing the justice system. The Secretary-General proposes to replace JAB by an Arbitration Board, replace the Joint Disciplinary Committee (JDC) by a Disciplinary Board and to strengthen the Panel of Counsel.

16. Paragraphs 18 to 53 of the Secretary-General's report cover the proposal to establish the Arbitration Board. The reasons put forward for this proposal include the insufficient number of volunteers on which the current system relies, the lack of professional training by those who serve to consider cases, delays in processing of cases resulting from lack of professional knowledge and the high cost of the current system represented by the time JAB members and chairpersons spend on each case, away from their regular duties. The Advisory Committee is also aware of a statement made by the Secretary-General in document A/C.5/49/CRP.2 that:

> "The studies and conclusions leading to this report were essentially guided by the principles of due process and of the rule of law, including the principle laid in the Covenant on Civil and Political Rights and in the 13 July 1954 advisory opinion of the International Court of Justice which required the United Nations to establish for its staff a 'judicial or arbitral remedy' system for the settlement of any disputes which may arise between it and them. Proposals put forward in report A/C.5/49/13 are therefore in line with these principles."

17. The Advisory Committee notes that the Arbitration Board is to be established by statute promulgated by the Secretary-General (A/C.5/50/2, para. 38). Annexes I and II to the Secretary-General's report provide changes to the Staff Regulations and Staff Rules to permit the establishment of the Arbitration Board and a draft of the statute.

18. To provide for the independence of the arbitrators, the Secretary-General proposes that they will be "officials" of the United Nations and not staff members. Should the General Assembly agree to the creation of an Arbitration Board, the Committee believes that a way would have to be found to ensure the operational independence of the arbitrators without creating a separate and potentially confusing category of non-elected official.

19. The Advisory Committee notes from article 3 of the draft statute that the Arbitration Board will be composed of 10 members (i.e., a Chairperson, an alternate Chairperson, 4 members and 4 alternate members).

20. With regard to the remuneration of the Arbitration Board Chairpersons and members, the Secretary-General intends to establish the annual compensation of the Chairperson and Alternate Chairperson at a level equivalent to the base salary and daily subsistence allowance payable to United Nations staff members at the Director (D-2) level, step VI, serving at Headquarters and Geneva respectively, which would amount to $249,200 for the Chairperson and $267,500 for the Alternate Chairperson on a biennial basis.

21. The members and alternate members of the Arbitration Board would receive for each day they exercise their functions during scheduled sessions at Headquarters and at Geneva, one three-hundred-and-sixty-fifth of the annual compensation equivalent to the base salary and daily subsistence allowance payable to United Nations staff members at the Director (D-2) level, step 1, serving at Headquarters and Geneva respectively. The Advisory Committee points out that the rationale for the packages of remuneration described in this and the preceding paragraph, which are unlike any existing pay arrangement, is unclear. If accepted by the General Assembly, these arrangements should be seen as sui generis.

22. The Advisory Committee notes from paragraph 30 of his report that the Secretary-General intends to accept the unanimous recommendation of the Arbitration Board, unless there is a compelling reason of law or policy not to do so.

23. The Advisory Committee also notes that the Secretary-General intends to introduce optional binding arbitration proceedings in cases where disputes involve purely factual issues or where the amounts involved are relatively small.

24. The proposal to replace JAB with an Arbitration Board has raised a number of concerns. In this connection, the Committee requested that it be provided with comments made on those proposals by the Administrative Tribunal. These were subsequently issued as an annex to document A/C.5/49/60/Add.2. More recently, further comments have been issued by the Tribunal and issued as an annex to document A/C.5/50/2/Add.1. As can be seen from these documents, the Tribunal has expressed reservations and doubts with regard to a number of aspects of the proposals for an Arbitration Board.

25. According to the Tribunal, the cost implications may be greater than currently anticipated since the concept of a single Arbitration Board with two members serving on a part-time basis may prove to be insufficient for the tasks to be performed and requiring additional full and/or part-time arbitrators. In the opinion of the Tribunal, there may also be requirements for ancillary services, such as transcriptions of testimony. In the view of the Tribunal, there will also probably be a need for additional staff to support the Board. If the Tribunal is correct in its assessment, the related costs, in the opinion of the Advisory Committee, would have to be reviewed.

26. The Advisory Committee points out that, since the comments of the Tribunal referred to in paragraph 25 above were made, the Secretary-General has amended his proposal to provide for the Geneva Board to be headed by a full-time Alternate Chairperson (see A/C.5/50/2, para. 41). Thus, both the New York and

Geneva Boards would consist of a full-time Chairperson/Alternate Chairperson, two part-time members and two part-time alternate members.

27. The Advisory Committee inquired as to the projected staff requirements for the Arbitration Board at New York and Geneva; it is still unclear to the Committee exactly what these requirements might be or how they would be met. As can be seen from the financial summary in paragraph 69 of the Secretary-General's report (A/C.5/50/2), no mention is made of secretariat or other services for the boards.

28. Additional information received from the Administrative Tribunal indicates that, in its opinion, the proposed daily fee for fully qualified part-time arbitrators and the remuneration proposed for the full-time chairperson plus per diem when on travel status may not reflect the current level of such fees for professional arbitrators.

29. In its most recent comments, the Tribunal reconfirmed its previous comments and further elaborated on its views with regard to estimated costs. The Tribunal observed (A/C.5/50/2/Add.1, para. 9) that "time requirements indicate that the arbitration structure is likely to be significantly more expensive than the estimate suggests" as it relates to the salary and per diem figures for the non-full-time members in New York. The Tribunal also notes that clerical and secretarial costs (if any) incurred by part-time arbitrators when working on cases out of their own offices away from Headquarters have not been included in the estimate.

30. Concerns have also been expressed by the Staff Union in comments that have been reproduced as annex II to document A/C.5/50/2/Add.1. These include the need for a selection process that would ensure truly independent arbitrators. The Staff Union also raises concerns with regard to the provision of adequate legal representation for staff and the question of binding arbitration.

31. The Advisory Committee believes that there are still issues to be addressed with regard to the proposal for an Arbitration Board. Bearing in mind the provisions of General Assembly resolution 49/222, the Advisory Committee recommends that more work be done before the creation of an Arbitration Board is further considered by the Assembly (see para. 40 below).

32. Paragraphs 54 to 68 of the Secretary-General's report discuss the proposal to replace JDC by a Disciplinary Board composed of qualified professionals. Annexes I and IV to the Secretary-General's report provide changes to the Staff Rules required for the proposed reform process and the draft statute to the Disciplinary Board.

33. The reasons for the proposal to reform the disciplinary process include the delays in the current system and the insufficient number of JDC members with specialized knowledge in technical areas, such as taxes and procurement.

34. The Advisory Committee notes from paragraph 56 of the Secretary-General's report that, unlike in the case of the proposed Arbitration Board, staff members would serve as members of the Disciplinary Board.

35. The Secretary-General proposes that the New York section of the Disciplinary Board be chaired by the Chairperson of the Arbitration Board and that the Geneva section be chaired by the Alternate Chairperson of the Arbitration Board.

36. In view of the close link between the Arbitration Board and the Disciplinary Board and in view of its recommendation with regard to the Arbitration Board in paragraph 31 above, the Advisory Committee recommends that establishment of a Disciplinary Board should be reconsidered in conjunction with the further consideration of the establishment of an Arbitration Board (see para. 40 below).

37. With regard to the Panel of Counsel, the Secretary-General proposes to create a post of Legal Officer at the P-4 level and a General Service post at the principal level. The Legal Officer will advise staff as to whether they may have a valid case and, if so, how to proceed. The Legal Officer will also advise staff members who are the object of disciplinary proceedings. The Advisory Committee sees this as a step in the right direction and recommends acceptance of the additional posts. The Advisory Committee agrees that resources should be provided for the training of Panel of Counsel members.

Conclusion

38. The Advisory Committee points out that, since it first drew attention to this problem, much progress has been made in the expeditious processing of cases. The Advisory Committee believes that the heart of the problem now lies in the growing number of administrative grievances. Proposals related to the early reconciliation and resolution of disputes should, hopefully, go a long way toward minimizing the actual number of matters referred to formal proceedings.

39. The Advisory Committee is not aware that enough has been done to respond to its earlier calls for simplification of rules and procedures so that misunderstandings can be avoided and identifying those aspects of staff administration which give rise to an inordinate number of appeals with a view to reform in these areas.

40. The Advisory Committee believes that fostering of conciliation and early resolution of disputes, strengthening the Administrative Review Unit and the Panel of Counsel and simplification/rationalization of existing administrative and personnel practices should address in a positive way the problems and shortcomings that currently exist. After a reasonable period of implementation, the effect of these changes should be evaluated with a view to determining what further measures might be necessary.

Financial implications

41. The recommendations of the Advisory Committee in the paragraphs above would give rise to requirements of $629,200 under section 26A of the proposed programme budget for 1996-1997 as follows:

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Establishment of new posts	
1 coordinator (D-1)	
2 review officers (1 P-5, 1 P-4)	
1 legal officer (P-4)	
1 General Service (Principal level)	537 900
Travel of the coordinator	41 300
Total	629 200

Notes

1/ Official Records of the General Assembly, Fortieth Session, Supplement No. 7 (A/40/7).